

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

DUAN L. WILLIAMS, #1115208,

Petitioner,

v.

ACTION NO. 2:17cv564

H.W. CLARKE,
Dir. Va. D.O.C.,

Respondent.

FINAL ORDER

Petitioner Duan L. Williams ("Williams"), a Virginia inmate, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging violations of his constitutional rights pertaining to his convictions on September 30, 2014, in the Circuit Court for the City of Virginia Beach for sexual penetration with an object, malicious wounding, domestic assault, third offense, and petit larceny. ECF No. 1. As a result of the convictions, Petitioner was sentenced to an imprisonment term of life plus 25 years and 12 months. *Id.*

The petition was referred to a United States Magistrate Judge for a report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and

Recommendation, filed July 2, 2018, finds that Williams' third ground for relief is procedurally defaulted, that his remaining grounds fail on the merits, recommends that Respondent's motion to dismiss be granted, and recommends that Williams' petition be denied. ECF No. 12.

Williams filed objections to the findings and recommendations on July 20, 2018. ECF No. 15. In his objections, Williams argues, as he did to the Magistrate Judge, that the victim had numerous inconsistencies in her statements and testimony and that the trial court failed to consider Williams' alternative explanations. *Id.* at 2-8. For these reasons, Williams argues, the Magistrate Judge erred in recommending that his first two grounds be denied. *Id.* Williams argues with respect to ground three that he demonstrated cause and prejudice to excuse his procedural default. *Id.* at 8-10. Finally, Williams repeats the same arguments made to the Magistrate Judge regarding his trial counsel's effectiveness. *Id.* at 10-18.

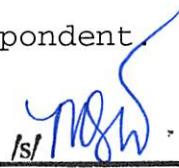
The Court, having reviewed the record and examined the objections filed by Williams to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation.

It is, therefore, **ORDERED** that Respondent's motion to dismiss, ECF No. 5, be **GRANTED**, and the petition for a writ of habeas corpus be denied. It is further **ORDERED** that Judgment be entered in favor of Respondent.

Petitioner may appeal from the Judgment entered pursuant to this Final Order by filing a notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such Judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.



Mark S. Davis
United States District Judge

Mark S. Davis
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
September **10**, 2018